

IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE JURISDICTION

WRIT PETITION NO.7878 OF 2005

Manoj Babasaheb Patil ..

Petitioner.

Vs.

Controller of Examination,
Maharashtra University of Health Sciences,
Nasik & anr. ..

Respondents.

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Mr. L.M. Acharya for the Petitioner.

Mr. M.S. Khadilkar instructed by Mr. R.V. Govilkar for Respondent
Nos.1 and 2.

Mrs. M.P. Thakur, Assistant Government Pleader for Respondent
No.4.

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**CORAM: KSHITIJ R. VYAS, C.J. &
DR.D.Y.CHANDRACHUD, J.**

25th April, 2006.

ORAL JUDGMENT (Per DR. D.Y. CHANDRACHUD, J.) :

1. The Petitioner is a student of the Second Year MBBS Degree Course at the Third Respondent institute. On 26th July, 2005, the Petitioner appeared for the examination in the subject of Pharmacology. During the course of the examination, the Petitioner was apprehended by the supervisor while using a mobile phone. The student (Seat No.84405) sitting immediately behind the Petitioner and the student (Seat No.84404) sitting immediately in

front of the Petitioner gave statements recording that the Petitioner had been apprehended while using a mobile phone, at 4.10 p.m. The Petitioner furnished a statement in his own hand writing admitting that he had been apprehended while he was in the process of using the mobile phone during the examination. The statements of the Chief Conductor / Center Incharge and Center Observer were also recorded. The manner in which the Petitioner was found to be using the mobile phone was described in the report of the supervisor. It was reported to the Controller of Examination that the Petitioner was found to have been frequently touching his ear while writing the answer paper. Therefore, after a suspicion had arisen, a search was carried out and a mobile phone which was affixed to a tiny microphone along with a wire that was stuck to the inner side of the shirt worn by the Petitioner came to be recovered. The Petitioner was called for an enquiry on 9th August, 2005 and he submitted his reply dated 26th July, 2005. The contention of the Petitioner was that on the date of the examination it had rained heavily and that he was frightened because it was his first paper, there was a delay and his mother who was to bring his tiffin had not arrived. The Petitioner claimed he had forgotten to put the mobile phone in his jacket and that

when he was apprehended, his explanation was not heeded to.

2. On these facts, the Maharashtra University of Health Sciences found the Petitioner to be guilty of the use of unfair means and while cancelling the result of the examination for which the Petitioner had appeared, directed that the Petitioner shall stand debarred from four more examinations.

3. The Maharashtra University of Health Sciences at Nashik has issued an ordinance, Ordinance 1 of 2002 governing the conduct of examinations. Ordinance 65.11 deals with punishment for use of unfair means and sub clauses 1 and 2 thereof which are material for the purpose of the present proceedings may be extracted for convenience of reference :

“65.11 Punishment

The Competent Authority concerned i.e. the Board of Examinations in the cases of University examination, the concerned Dean/ Principal in the cases of College examination, and the Head in the cases of examination held by the Recognised Institution, after taking into consideration the report of the Committee shall pass such orders as it deems fit including granting the student benefit of doubt, issuing warning or exonerating him/her from the charges and shall impose any one or more of the following punishments on the student/s found guilty of using unfair means:

65.11.1 Annulment of performance of the examinee in full or in part in the examination he/ she has appeared for.

65.11.2 Debarring examinee from appearing for any examination of the University or College or Institution for a stipulated period not exceeding five years.

...”

The sub clauses which follow 65.11.2 enunciate various other penalties that may be imposed. Clause 65.12 of the Ordinance adverts to broad categories of unfair means which, as experience shows, are resorted to by some examinees and indicates the quantum of punishment that can be awarded for each category. Human ingenuity defies conventional limitations. The human mind can be disingenous. The lack of ethics is not confined to defined categories. Hence, a residuary category of all that is not enumerated is made. Clause 65.12.15 deals with other malpractices not covered by those stipulated earlier. The punishment that is envisaged is annulment of the performance of the student at the examination of the university, college or institution in full and severe punishment depending upon the gravity of the offence.

4. In the present case, having regard to the nature of the

misconduct, it is apparent that the University has acted within the scope and purview of its powers. Under Clauses 65.11.1 and 65.11.2 it is open to the University to annul the performance of the examinee for that particular examination and to debar him or her from appearing at any subsequent examination for a period not exceeding five years. The punishments which are provided for in Clause 65.11 can be imposed either singly or in combination. The University, in our view, is justified in taking a serious view of malpractices that are resorted to by students. Malpractices in the course of the examination seriously affect the sanctity of the examinations process. No academic body can be oblivious to the erosion of public confidence in the examination system that would be occasioned by resort to unfair means at examinations. Such instances have to be dealt with all the seriousness that is required to root out the evil of examination malpractices.

5. An enquiry was held into the allegation of malpractices during the course of the Second Year MBBS Examination, against the Petitioner. The enquiry was held in a manner consistent with the principles of natural justice. The finding which has been arrived at is supported by the material on the record. There is a

contemporaneous admission by the Petitioner, and the reports of officials who were supervising the examination. Such enquiries are not governed by the strict rule of evidence. Compliance with natural justice is the mandate and that has been done. The penalty which has been imposed lies within the jurisdiction of the University. We, therefore, do not find any reason to exercise our extraordinary jurisdiction under Article 226 of the Constitution in the facts of the present case.

6. On behalf of the Petitioner reliance has been placed on an order dated 26th October, 2004 of a Division Bench of this Court in S.P. Kharat v. Controller of Examinations , MUHS, Nasik (Writ Petition 8069/04 and companion writ petitions). The Division Bench while disposing of the petitions had recorded that the University had modified the penalty which had been imposed. Thus, it is clear that the order of the Court proceeded on a decision taken by the University. In such matters, it is for the University to consider whether if at all any modification of the penalty is warranted. The High Court in the exercise of its jurisdiction under Article 226 would not issue a direction unless it is satisfied that the penalty that has been imposed is so harsh as to be

unconscionable or arbitrary. Even in such a case, it would be for the University to reconsider the penalty on a remit by the Court. We do not find that the present case falls into that category. The charge which was established against the Petitioner is a serious charge. The Petitioner who is a student of the Second Year MBBS Degree Course could not have been ignorant of the serious consequences of his conduct. In these circumstances, no directions are warranted by this Court. Counsel appearing for the Petitioner, however, submitted that the Petitioner would place a representation before the competent authority for consideration. It is always open to the Petitioner to do so in which event, a decision in accordance with law can be arrived at by the University thereon. We find no reason for interference. The Petition is accordingly dismissed.

CHIEF JUSTICE

(DR. D.Y. CHANDRACHUD, J.)